

memorandum

DATE: December 8, 2009

TO: Michael S. Flad, City Manager
City Planning Board

FROM: Greg Herrmann, Interim Community Development Director
by Michael D. Forbes, Deputy City Planner

SUBJECT: Study Session on Wireless Facilities

PURPOSE:

The purpose of this report is to provide the City Council and Planning Board with an overview of wireless (cell phone) facilities including current regulations and issues and to seek direction regarding any desired changes to City codes or policies.

DISCUSSION:

Burbank's Ordinance

Burbank's wireless telecommunications facilities ordinance provides development standards for "commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services." The most common application of the ordinance has been for cell phone antenna facilities. The ordinance was adopted in 1996 and codified as Burbank Municipal Code (BMC) Section 10-1-1118 (Exhibit A), and has not been amended since its adoption. The ordinance specifies the zones in which wireless facilities may be located and provides standards including height limitations and location requirements.

There are two general types of wireless facilities. Building-mounted facilities are antennas that are mounted either on the face of a building or on the roof of a building. The related equipment cabinets may be located on the roof, at ground level, or inside the building. Ground-mounted facilities are antennas located on freestanding poles or other supports. Such facilities are sometimes disguised as trees or flag poles. Ground-mounted facilities may also be attached to existing telephone or light poles. Cabinets containing the related equipment are typically located at ground level or underground near the base of the pole. The following is a summary of the ordinance's requirements for both types of facilities.

Building-mounted facilities

- Building-mounted facilities are permitted in all multifamily residential zones, all non-residential zones, and on government-owned property.

- The maximum allowed height of building-mounted facilities is 15 feet above the maximum allowed building (roof) height in the applicable zone, except that whip antennas up to 15 feet tall are exempt from the height limitation. Any building-mounted facility over 15 feet tall as measured from the roof surface requires a Conditional Use Permit (CUP).
- All building-mounted facilities must be located and/or screened so as to minimize visibility from public streets and neighboring residential properties.

Ground-mounted facilities

- Ground-mounted facilities are permitted in all non-residential zones and on government-owned property.
- The maximum allowed height of ground-mounted wireless facilities is dependent upon the distance of the facility from single family and multifamily residential properties, as shown in the table below, except that whip antennas up to 15 feet tall are exempt from the height limitation. Any ground-mounted facility over 35 feet tall requires a CUP.

Distance from R-1, R-1-H, or R-2 lot line (including comparably zoned properties outside City boundary)	Distance from R-3, R-4, or R-5 lot line	Maximum height for ground-mounted facilities
Less than 25 feet		1 foot per 1 foot of distance from nearest R-1, R-1-H, or R-2 lot line
25-50 feet		25 feet
50-150 feet		35 feet
150-300 feet	Less than 300 feet	50 feet
300-500 feet		70 feet
500 feet or greater (not located in a specific plan or redevelopment project area)		70 feet
500 feet or greater (located in a specific plan or redevelopment project area)		Determined through CUP process

All wireless facilities

- One facility is allowed per property by right in the zones and locations noted above. Additional facilities on the same property require a CUP.
- Facilities must comply with all setback requirements in the applicable zone and may not be located between the front property line and the structure. Facilities may not extend across property lines.
- Facilities may not be located inside a residential dwelling unit.
- Facilities must be colored so as to blend with their surroundings, reduce glare, and minimize visual intrusiveness.

- Warning lights must be placed on all facilities as deemed necessary by the Chief of Police.
- No signs are allowed on any facilities or related screening except for safety warning signs.
- Wireless facilities must be removed within 12 months of ceasing operation.

Applicability

The wireless ordinance applies only to cell phone and similar telecommunications facilities as noted above. The requirements discussed in this report do not apply to satellite dishes, microwave transmitters, and similar communications equipment operated by media companies and other businesses throughout the City. Such equipment is regulated with other rooftop equipment, and under additional requirements in certain zones.

Further, the requirements discussed in this report are located in the Zoning Ordinance and therefore do not apply to facilities located in public rights-of-way, which have no zoning designation. Although cities may also regulate wireless facilities in the public right-of-way or public utility easements, there are additional issues to be considered due to regulations in the California Public Utilities Code. Wireless facilities in the public right-of-way require encroachment permits and are regulated by the Public Works Department. If a proposed facility were to be located on a City-owned light or power pole, Burbank Water and Power would also be involved. To date, there have been no encroachment permits issued for wireless facilities.

Telecommunications Act of 1996

The Federal Telecommunications Act of 1996 established parameters for local government regulation of wireless facilities and clarified the roles and responsibilities of local governments and the Federal Communications Commission (FCC) in regulating the facilities. The Act specifically preserves the authority of state and local governments over decisions regarding the placement, construction, and modification of wireless facilities, subject to several important limitations, as follows:

- Cities may not unreasonably discriminate among wireless service providers and may not prohibit or have the effect of prohibiting the provision of wireless service.
- Cities must act upon a request to erect or modify a wireless facility within a reasonable time. Any decision to deny a request must be made in writing and be supported by substantial evidence contained in a written record.
- Cities are expressly prohibited from regulating the placement, construction, or modification of wireless facilities on the basis of the environmental effects of radio frequency (RF) emissions so long as the facility complies with FCC regulations.

An applicant who believes that a city has acted in a manner that is inconsistent with any of the above limitations is specifically authorized by the Act to commence legal action against the city.

Other Regulations

Various state laws apply to wireless facilities and vary depending on whether the facility is located in a public right-of-way or on private property. There have also been several court cases

in recent years that have established precedents regarding interpretation of state and federal law. The City Attorney's office has prepared a memo summarizing recent cases (Exhibit B).

ANALYSIS:

Burbank's requirements regarding wireless facilities were adopted in 1996 and have not been revised since their adoption. Since that time, wireless technology has evolved significantly, the number of wireless carriers has increased, and controversies surrounding wireless facilities have continued. Most facilities that have been approved under the ordinance have seen little to no controversy or opposition. Currently however there is controversy regarding a proposed facility at Brace Canyon Park that is allowed by right under the zoning but requires City Council approval of a lease because it would be located on City property. Wireless facilities have been the subject of much controversy recently in Glendale, where a moratorium is in place pending adoption of new regulations. A draft of Glendale's proposed regulations was released in October. Glendale's draft regulations are complex and propose requiring somewhat extensive review for every wireless facility.

Concurrent with these controversies, the Planning Board has requested to begin receiving substantially more information about proposed wireless facilities when they are considering a CUP request, including technical information about the equipment being used and its RF emissions. Further, a Zone Text Amendment (ZTA) application has been submitted to allow wireless facilities at private institutional facilities in the R-1 Single Family Residential zone, which is not currently allowed under the zoning.

The convergence of these different issues and the age of Burbank's regulations led staff to schedule this study session. At the study session, staff will give a short presentation (Exhibit C) that will show the various types and locations of wireless facilities, summarize current City regulations, and highlight ongoing issues pertaining to wireless facilities. Staff has invited representatives from wireless carriers and the California Wireless Association, a nonprofit association that seeks to raise awareness and provide information about the wireless industry. These representatives will be available to answer questions from the City Council and Planning Board.

The Planning Board requested that, as part of this study session, extensive technical information be provided about RF emissions and the studies that have been conducted about their potential health effects. The Board further requested information about all of the existing wireless facilities in Burbank. This information will take some time to gather and is beyond the scope of this report and study session, but can be provided at a later time.

CONCLUSION:

Staff will seek input and direction from the City Council and Planning Board about whether there is a desire at this time to pursue amendments to Burbank's wireless regulations, and/or to create policies for locating facilities on City property and in the public right-of-way. Staff will also seek direction regarding any desire for additional study sessions on more specific topics

related to wireless facilities (such as RF emissions) and/or community meetings to provide opportunities for public input.

RECOMMENDATION:

Staff recommends that the Planning Board and City Council provide input and direction regarding Burbank's wireless regulations and policies.

LIST OF EXHIBITS:

Exhibit A	Burbank Municipal Code Section 10-1-1118
Exhibit B	Memo on recent case law prepared by City Attorney's office
Exhibit C	Presentation to be given by staff at study session